

Re: Senate Bill 652

The bill recognizes an obvious fundamental truth – self confession to the state or local police departments' internal affairs unit almost always guarantees absolution. Exceptions are very rare. Proposed Bill 652 is long overdue and necessary but amounts to absolution if the victim survives.

The assault on The knuckles of a 6' 2" , 214 pound police officer by the nose of a teenage 135 pound Puerto Rican who ran a stop sign was sworn to by the two officers who pulled the car over and four who were called as "back-up". All their reports were not only verbatim but contained the same spelling and punctuation errors. They were all hand written by each who swore it was his own spontaneous recollection. (Arroyo v. Walsh, 317 F. Supp. 896). Chief Walsh insisted nobody had done anything wrong. The usual "resisting arrest" charge was dropped. Bone chips of Mr. Arroyo's nose were removed from his cheek bones. The officer did not seek treatment for the injury to his knuckles.

Two Bridgeport police officer who were escorting a man handcuffed behind his back into police headquarters plead guilty to "recklessly endangering with extreme indifference to the life of John Colquit did in fact create a risk of serious injury to him". The Sargent who called the ambulance said "one of our guys cranked him.". Mr. Colquit spent ten days in the hospital to recover from so much blood loss. The criminals who assaulted him Halpin and Christy, were promoted to Sargent because they passed the exam. Their convictions made no difference. They served no time.

If Mr. Colquit had died of blood loss proposed bill 652 would have applied. His survival makes the almost deadly brutality moot. To remove any doubt of the need for Bill 652 with an amendment to cover "conduct causing serious and/or permanent injury" we need only look to the statement of Waterbury State's Attorney John A Connelly explaining why he would not seek a warrant for the arrest of a white police officer who was observed by numerous witnesses beating a helpless black young man with his black jack until the handle broke.

"Whether or not Michael Robinson's civil rights were violated is not within the jurisdiction of this office. Violation of one's civil rights comes within the jurisdiction of the federal government and that determination must be left to the federal agencies that have been vested with that authority."

At the very least, Bill 652 should be amended to permit the Judiciary Committee and/or the State Attorney General to move for the appointment of a grand jury to determine if prosecution is called for. The database for this proposal has been left with the Committee c/o Ms. Faticoni. My credential and a Connecticut Law Tribune summation are attached. If I could be of any further assistance please do not hesitate to call.

Burton Weinstein, Esq.
(203) 208-5093

APRIL 24

THE CONNECTICUT LAW TRIBUNE

Letters

to the

Editor

a Police Officer Perjury Problem

To the Editor:

The *New York Times*' reports of frequent and widespread perjury by New York City police officers (April 22 and 23, 1994) called public attention to a situation that those involved in the "criminal justice system" have known about for a long time. In 1992, the Second Circuit Court of Appeals sustained the right of a victim of such perjury to pursue an action against New York City detectives and an assistant district attorney who knowingly used the perjury. (*Walker v. City of New York*, 974 F.2d 293.)

The problem is not limited to New York City and is probably nationwide. It certainly exists in Connecticut and has for a very long time. Back in the '60s, I described the testimony of six Bridgeport police officers, that their verbal accounts of an incident with identical spelling and punctuation errors was their spontaneous recollection and that the reports were prepared without discussing it with each other or checking each other's work, as "the pro forma perjury with which defense counsel are depressingly familiar." (*Arroyo v. Walsh*, 317 F. Supp. 496.) The city paid but there was no disciplinary action taken. Indeed, the chief of police testified that nobody had done anything wrong.

There is a pending case in Waterbury that outdoes even New York City. A Hispanic officer was charged with the misdemeanor of filing a false report that was used to cover up the beating of a young black man by his partner. His attorney filed a motion to dismiss arguing that the stingling cost of a minority officer for prosecution for filing a false report was "selective discriminatory prosecution" since white officers routinely file false reports and are never prosecuted. The defense attorney subpoenaed me and another civil-rights attorney in Connecticut to testify about the false reports we had encountered. In the face of the motion, the state's attorney dropped the charge. I demand this was a use of the Equal Protection Clause of the 14th Amendment that had never occurred to the drafters of it. (*James v. Dickson, et al*, D.C. Conn. 91-649 (NWB).) The city of Waterbury insists that none of its officers (did) anything wrong. In another case a federal judge took special note of the utter incredibility of the Waterbury policeman's story. (*Ervin v. DiStasio*, 91-88-464 (NBB).) The perpetrator had been promoted.

In Bridgeport three convicted criminals have been promoted by the police department after their convictions. Two are now sergeants and one was permitted to return before his second conviction. The two sergeants claimed that a black man tripped over his own feet and fell as he stepped out of a police car behind the booking room. How he managed to get multiple traumas along his back while falling forward was never explained. A sergeant reported to the dispatcher that "one of our guys crashed him" just after the incident. The destitute if not bankrupt city of Bridgeport paid \$180,000 for that demonstration of bigotry and brutality (since as much as it could have settled

In Danbury the police searched the wrong house and threw a black young man across a room pointing a gun at his face shouting "move a muscle you f... n nigger and I'll blow your brains out." The young man's mother and he swore the incident happened as did three other witnesses in the room. The police all swore that no one touched the young man or pointed a weapon at him. The city made a very substantial settlement but refused to interview any of the witnesses and totally exonerated the officers. A complaint filed with the Civil Rights Division of the Justice Department was rejected out of hand without any FBI agent attempting to speak to any of the complainants or their witnesses. That was a violation of even Attorney General Meese's guidelines.

I brought the Danbury incident up to John Duane shortly after he was appointed to head the Civil Rights Division of the Justice Department in the Bush administration. At a conference attended by the U.S. attorney, Drew Days, who is now the collector general, and representatives of the Guardians, the Civil Liberties Union and the NAACP, Mr. Duane told us that the Danbury file was closed because "there wasn't enough blood on the file." He was saying that perjury by the police at least in civil-rights cases was not worth the notice of the Civil Rights Division of the Justice Department.

All the Torrington police who testified swore that Tracy Thurman did not ask to have his husband arrested before that last terrible attack but only wanted to have them record his thesis. No one in the room believed them, certainly not the judge and jury. Even after a \$2.6 million verdict against 24 police officers, Torrington is incapable of recognizing that any of them did anything wrong.

Deval Patrick, the new head of the Civil Rights Division of the Justice Department, can take a long step toward solving the problem. Selected prosecutions for perjury in civil-rights cases around the country would get the word out pretty quickly that somebody cares. Clearly, judges and prosecutors who turn blind eyes and deaf ears to the pro forma perjury that is so familiar cannot be relied upon.

Civil-rights verdicts are very costly—over \$1 million in the last 10 years in Waterbury and over \$3 million in Bridgeport. The fear and contempt that the minority of police officers who abuse their authority cause is hindering the war against crime and the war against drugs. If the Civil Rights Division of the Justice Department started a high-profile pattern of prosecutions for perjury, the majority of decent police officers who are trapped by the code of silence would be grateful. There is ample justification since every act of perjury has the effect of depriving a citizen of freedom without due process of law. Effective prosecution for perjury by the U.S. Justice Department would not only save the taxpayers money but would make it all a bit safer and more free.

Burton M. Weinstein

The Connecticut Law Reporter

Cite as 27 Conn. L. Rptr. No. 14, 517 (September 18, 2000)

517

practicing for at least twenty years and were partners in law firms, one was a teacher at the Yale University Law School; two had specialized experience in federal court.

In *Calouine v. City of Bridgeport*, United States District Court, District of Connecticut, Civil No. 3:94CV379 (WWE) (February 4, 1993), Judge Eginton awarded Attorney Burton Weinstein, who has practiced far longer than even Attorney Williams, attorneys fees pursuant to §1988, based on an hourly rate of \$250.00. Judge Eginton observed the "Attorney Weinstein is among the most experienced plaintiffs' civil rights litigators in the state, having practiced in the federal courts for many years and having successfully litigated several significant civil rights cases." Indeed, Attorney Weinstein is probably the most accomplished and experienced civil rights lawyer in Connecticut. He labored in that area of the law when precedents under 42 U.S.C. §1983 were relatively few and has established landmark precedents under that statute. See, e.g., *Thurman v. City of Torrington*, 595 F.Supp. 1521 (D.Conn. 1984). Attorney Weinstein has been nationally recognized in the areas of civil rights and constitutional law.

By contrast, Attorney Palmieri has been a member of the Connecticut Bar for less than six years. During almost all of that time, however, he has practiced with the law firm of Attorney John Williams, where, according to his affidavit, his primary areas of practice have been civil rights law and criminal defense. His affidavit also states that he has tried to verdict approximately sixty-five jury trials in federal and state court, of which forty-five have been civil rights claims brought under §1983. Further, Attorney Palmieri states:

To date, I have briefed and argued appeals, both as appellant and appellee, approximately twenty-five times in the Appellate Court, State of Connecticut, approximately ten times in the United States Court of Appeals for the Second Circuit, and three times in the Supreme Court, State of Connecticut. I have submitted written argument to the Supreme Court of the United States in the form of a brief in Opposition to a Petition for a Writ of Certiorari. In addition, I am awaiting the scheduling of argument on a number of matters pending in the Appellate Court of the State of Connecticut and the United States Court of Appeals for the Second Circuit.

A review of appellate case law reflects that Attorney Palmieri does have a significant amount of experience briefing and arguing appeals.¹⁰

In addition, Attorney Palmieri states that he graduated from Albertus Magnus College summa cum laude with a Bachelor of Arts degree in English, and that he graduated from the Vermont Law School in May 1993. In law school, he was the Notes Editor of the Vermont Law Review. He states that, subsequent to graduation from law school, legal research and writing completed by him as a student was published in a two volume treatise about Vermont's Act 250.

From the evidence before it and its own familiarity, the court finds that the market rate prevailing in the community for appellate litigation by lawyers of reasonably comparable skill, experience and reputation to that of Palmieri is \$150.00.

"The determination of the amount of the award does not end with the lodestar calculation. Although there is a strong presumption that the lodestar figure represents the reasonable fee, *City of Burlington v. Dague*, 1505 U.S. 557, 562, 112 S.Ct. 2638, 2641, 120 L.Ed.2d 449 (1992), other considerations may lead to an upward or downward departure from the lodestar." (Internal quotation marks omitted.) *Grant v. Martinez*, supra, 973 F.2d 101; see *Hensley v. Eckerhart*, supra, 461 U.S. 434. Attorney Palmieri enjoyed an optimal result on appeal—affirmance. The degree of success, at least at the trial level, has been considered the most important of the *Hensley* criteria. *Orchano v. Advanced Recovery, Inc.*, supra, 107 F.3d 96-97. In addition, Attorney Palmieri's appellate brief was very good. On the other hand, while this case originally may have been less than "desirable" for some lawyers—the trial judge characterized it as a "close case"—after the jury's verdict, the case became very attractive from the standpoint of an appellate lawyer, even if the plaintiff had been without assets. The plaintiff had been awarded a large verdict. On appeal, the plaintiff stood as the appellee; the defendants were appellants. "It is well settled that the burden of establishing harm rests on the appellant." *Williams Ford, Inc. v. Hartford Courant Co.*, 232 Conn. 559, 572, 657 A.2d 212 (1995).

Hensley v. Eckerhart, supra, 461 U.S. 430 n.3, however, lists twelve factors which a court should consider in setting attorneys fees.¹¹ This court has considered each of them. Less frequently discussed in case law but no less important than many other factors is the "reputation" of the attorney seeking attorneys fees. *Id.* For a variety of reasons this is an area where trial judges, generally acting without the benefit of sworn "evidence" in the strict sense, must tread carefully. Per force of *Hensley*, however, tread we must.

"[R]eputation represents the community's belief as to the actual character or disposition" of a person. *State v. Blake*, 157 Conn. 99, 104, 249 A.2d 232 (1968). A lawyer's most precious asset is his or her professional reputation. *Superintendent v. Hill*, 472 U.S. 445, 457, 106 S.Ct. 2768, 86 L.Ed.2d 356 (1985) (Stevens, J., dissenting, with Brennan and Marshall, J., concurring); *Cooter Gell v. Hartmarx Corp.*, 406 U.S. 384, 413, 110 S.Ct. 2447, 110 L.Ed.2d 359 (1990) (Stevens, J., concurring in part and dissenting in part). Competence and candor are chief among the many characteristics which courts and society at large require of lawyers. A lawyer's reputation for exaggeration, or worse, cuts to the heart of his professional reputation. A lawyer's "professional value" derives not merely from his skills as an advocate or technician, but from his reputa-

2000
o. 14
y the
pany

.. I

.. I

II

IV

V